

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1467/1989.
T.A. No.

199

DATE OF DECISION October 11, 1991.


<u>Shri P.D. Aggarwal & Ors</u>	Petitioner _s .
<u>Shri B.B. Srivastava,</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Anr.</u>	Respondent
	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? —
2. To be referred to the Reporter or not ? —
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? —


 (Amitav Banerji)
 Chairman
 11.10.1991.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.1467/1989.

Date of decision: 11.10.1991.

Shri P.D. Aggarwal & Others	...	Applicants
	Vs.	
Union of India & Another	...	Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

for the applicants	...	Shri B.B. Srivastava, Counsel.
For the respondents	...	None.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

This O.A. has been filed by three persons,
S/Shri P.D. Aggarwal, P.N. Sharma and Mrs. Prem Lamba.
They have been permitted to file a joint O.A. The short
question which arises in this case is whether the
applicants are entitled to the benefit of the period
of ad-hoc appointment where the said ad-hoc period is
followed by regular appointment and the service is continuous.

It may be mentioned here that applicant No.2,
Shri P.N. Sharma has filed O.A. No.690/1988 claiming promotion
from the same date from which his junior Shri R.C. Gupta,
Store/Purchase Assistant (Grade V) was promoted.
Hence the present O.A. filed by three persons will be
restricted to two persons, viz. Applicant No.1, Shri
P.D. Aggarwal and Mrs. Prem Lamba, applicant No.3.

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The applicants' representations for counting of ad hoc service in the grade of Stores/Purchase Assistant Grade V (now Grade III) for the purpose of seniority in that grade were rejected by respondent No.1, Director General, Council of Scientific & Industrial Research (for short 'D.G. , C.S.I.R.'), on the plea that ad hoc period of service cannot be counted for the purpose of seniority as per the prescribed procedure laid down in C.S.I.R. Administrative Service Rules (for short 'the Rules')

The contention on behalf of the applicants was that the All India Seniority List of stores & Purchase Assistant-Grade V (now Grade III) notified under Order No.33(88)87-EI dated 20.1.1989 did not take into account applicants' entire period of service in the grade of Stores/Purchase Assistant Grade V (now Grade III) for seniority in that grade as per the principle laid down by the supreme Court in the case of NARENDER CHADHA & OTHERS Vs. UNION OF INDIA & OTHERS (ATR 1986(1)SC 49) as a result of which the applicants' seniority was wrongly fixed.

The applicants were appointed in the National Physical Laboratory. Applicant No.1, Shri P.D. Aggarwal was appointed as Junior storekeeper on 8.10.1964 in the pay scale of Rs.110-180. He was promoted as Storekeeper on 16.5.1966 in the pay scale of Rs.330-560 and Selection Grade Storekeeper on 1.5.1978 in the pay scale of Rs.395-680. He was promoted as stores Assistant (Grade V) on ad hoc basis w.e.f. 20.2.1980 in the pay scale of Rs.425-700. He was promoted as stores Assistant (Grade V, now Grade III) with effect from 3.3.1982 on regular basis in the pay

scale of Rs.425-700 (now revised to Rs.1400-2600).

Applicant No.3 (Mrs. Prem Lamba) was appointed as Junior storekeeper on 5.10.1964 and was promoted as storkeeper on 1.10.1966 and Selection Grade Storekeeper on 24.10.1977. She was promoted as Stores Assistant (Grade V) on ad hoc basis w.e.f. 20.2.1980 and on regular basis w.e.f. 6.8.1981. She was promoted as stores Officer on ad hoc basis w.e.f. 26.5.1989 in the pay scale of Rs.2000-3500.

The Stores and Purchase cadre for non-gazetted staff was constituted vide CSIR Order No.5 issued under their Circular No.33 (89)81-E-I dated 12.11.1981 (Annexure A-3) according to which recruitment to Stores/ Purchase Assistant (Grade V) was to be made as per the procedure outlined in the revised CSIR Administrative Services (Recruitment and Promotion) Rules, 1981, later notified as CSIR Administrative services (Recruitment & Promotion) Rules, 1982 and made effective from 1.2.1982.

The Governing Body of the C.S.I.R. in its 118th meeting held on 24.2.1989 approved the amendments to Part V of the CSIR Administrative Services (Recruitment & Promotion) Rules, 1982 relating to Stores & Purchase Cadre vide Circular No.33 (113)87-EI dated 17.5.1989 (Annexure A-4) whereby instead of the 7 grades in the Stores/Purchase Cadre in the earlier rules, the amended rules prescribed only 5 grades.

The applicants' case is that they started officiating in Grade V as Stores Assistant w.e.f. 20.2.1980 and they were regularised w.e.f. 3.3.1982 and 6.8.1981 respectively. They claim that the period during which they

continuously served in ad hoc officiation should be counted towards their seniority and in support of that, they have cited the case of NARENDER CHADHA AND OTHERS (supra).

Learned counsel for the applicants also relied on the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS (JT 1990(2) SC 264).

The applicants have also urged that they are entitled to get their seniority revised in the All India Seniority List of Stores/Purchase Assistant Grade V as on 31.12.1983 since published and circulated by the respondents.

Although none appeared on behalf of the respondents, we have considered the reply filed on behalf of them. The plea taken by the respondents^{is} that the O.A. filed by the applicants is wholly misconceived, untenable and frivolous and contains wrong facts and basis. The respondents have their approved Rules called "CSIR Administrative Services (Recruitment & Promotion) Rules, 1982 which specifically lay down the conditions for eligibility for promotion to higher grades based on "Approved Service". Rule 2(viii) under Part-I of the said Rules defines "Approved Service". The stand taken by the respondents is that the CSIR have meticulously followed the Rules and there cannot be any exception. The applicants were given ad hoc officiation for short periods as a stop gap arrangement against pro-tempore chain vacancies, because their incumbents had been given ad-hoc officiation in higher posts. It is further stated that

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they were not appointed⁻⁵⁻ on ad-hoc basis against substantive or regular vacancies nor any DPC meeting was held to consider them for ad-hoc promotion. Their further objection was that their claim for quantifying ad-hoc service rendered against pro-tempore posts to make up the required length of approved service for consideration for promotion to higher grade vis-a-vis specific Rule of "Approved Service" is wholly untenable and their O.A. deserves to be dismissed on this ground.

Another plea taken was that the applicants have impleaded Union of India in the O.A. It was stated that neither any relief has been claimed against Union of India nor any relief lies against Union of India as the applicants are employees of the C.S.I.R. which is a Society registered under the Societies Registration Act. It is submitted that the O.A. merits disposal on this short ground.

We have heard Shri B.B. Srivastava, learned counsel for the applicants. None appeared for the respondents. We have considered the material on the record. The principal question in dispute is whether the applicants are entitled to count their ad hoc service in C.S.I.R. and quantify the same towards minimum period of service required under the Rules for being considered for promotion to promotional posts.

In the case of A. JANARDHANA Vs. UNION OF INDIA (AIR 1983 SC 769) the supreme Court has held:

"It is an equally well recognised cannon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same

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service, the rule of continuous officiation or the length of service or the date of entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the test of Article 16."

This view found support in the case of NARENDER CHADHA AND OTHERS (supra) and has now been reiterated by the supreme Court in the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS (supra).

It is evident from paragraph 4.2 of the O.A. that the CSIR Administrative Services (Recruitment & Promotion) Rules, 1982 was made effective from 1.2.1982. Respondents have also referred to the above Rules. Initial date of ad hoc officiation in grade V as stores Assistant of the applicants was prior to 1.2.1982. It is, therefore, clear that the rules on which the respondents have relied on was not there in existence before 1.2.1982. consequently, it was a situation where there was no Rules. In other words, it would be a situation de hors the Rules. It is evident from the record that the applicants commenced their ad-hoc officiation from 20.2.1980. It is also evident that they continued officiation uninterruptedly till their regularisation. In our opinion, the principle laid down in the cases of A. JANARDHANA (supra) , NARENDER CHADHA AND OTHERS (supra) and THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS (supra) would be applicable to the facts of the present case and the view taken that their ad hoc officiation was under the provisions of

the C.S.I.R. Administrative Services (Recruitment & Promotion) Rules, 1982 is wholly untenable.

In view of the law laid down by the supreme Court in the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS (supra), reference may be made to clauses (A) and (B) in paragraph 47 which read as under:

"47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.


(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."


In the present case, it was not a stop-gap arrangement for it continued uninterruptedly. Clause 'B' would be applicable because at the time when the applicants were appointed in officiating capacity, there were no Rules but subsequently when they were regularised, the Rules have come in force. Applicant, Mrs. Prem Lamba was regularised even before coming into force the Rules, i.e., on 6.8.1981. We are, therefore, of the view that the applicants were entitled to the benefit of ad-hoc officiation and they are entitled to get their seniority revised in

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the All India Seniority List of Stores/Purchase Assistant Grade V as on 31.12.1983. The applicants would also be entitled for being considered for promotion.

In the result, therefore, we direct the respondents to deem the applicants 1 and 3 to have been appointed as Stores Assistant (Grade V) on regular basis with effect from the date of their initial officiation in that grade for the purpose of counting their seniority. We further direct the respondents to assign the applicants 1 and 3 their respective seniority in Grade V of Stores Assistant's post based on the date of their regular appointment to that grade from the date of their initial ad hoc officiation in that grade and further correct the All India Seniority List of Stores & Purchase Assistant (Gr.V) as on 31.12.1983 published and circulated on 20.1.1989. Lastly, we direct the respondents to pay all consequential monetary benefits to applicants 1 and 3 and further direct that they shall be considered for promotion to the next higher grade. We order accordingly. There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)
11.10.1991.


(AMITAV BANERJI)
CHAIRMAN
11.10.1991.

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